

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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THE TRUSTEES OF THE LOCAL 522
PENSION FUND AND THE LOCAL 522
WELFARE FUND OF NEW YORK AND NEW
JERSEY,

Plaintiffs,

- against -

BAYWAY LUMBER AND HOME CENTER,

Defendant.

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ECF

COMPLAINT

16-CV-

Plaintiffs, the Trustees of the Local 522 Pension Fund and the Local 522 Welfare Fund of New York and New Jersey, by their attorneys, Cary Kane LLP, respectfully allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action under Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132 and 1145, to recover contributions owed to the Local 522 Pension Fund (the "Pension Fund") and Local 522 Welfare Fund of New York and New Jersey (the "Welfare Fund")(collectively the "Funds") in accordance with collective bargaining agreements ("CBAs") executed by defendant Bayway Lumber and Home Center ("Bayway"), relevant plan documents and applicable law.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action pursuant to Sections 502 and 515 of ERISA, 29 U.S.C. §§ 1132 and 1145.

3. Venue properly lies in this judicial district pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), as the Funds are administered in this district.

THE PARTIES

4. At all times material hereto, the Funds have been “employee benefit plans” and “multiemployer plans” as those terms are defined by Sections 3(3) and 3(37) of ERISA, 29 U.S.C. §§ 1002(3) and 1002(37). The Funds are administered at 2137-2147 Utica Avenue, Brooklyn, New York 11234.

5. At all times material hereto, the Welfare Fund has provided health and severance benefits to eligible employees of employers that participate in the Welfare Fund.

6. At all times material hereto, the Pension Fund has provided retirement benefits to eligible employees of employers that participate in the Pension Fund.

7. At all times material hereto, the Trustees have been the “plan sponsors” of the Funds, as defined by Section 3(16)(B) of ERISA, 29 U.S.C. § 1002(16)(B). The Trustees are “fiduciaries” of the Funds, as defined by Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

8. At all times material hereto, Bayway has been an “employer” as defined by Section 3(5) of ERISA, 29 U.S.C. § 1002(5), with offices located at 400 Ashton Avenue, Linden, New Jersey, 07036. Since Bayway is a corporation, it is not incompetent or in military service.

RELEVANT FACTS

9. At all times material hereto, Bayway was a party to CBAs with Teamsters Local 522 (the “Union”).

10. The CBAs set forth the terms and conditions for employment and benefits for employees of Bayway represented by the Union.

11. The CBAs required Bayway to make monthly contributions to the Funds on behalf of those of Bayway's employees covered by the CBAs (the "Contributions").

12. The CBAs also required that Bayway submit monthly remittance reports ("Reports") to the Funds office identifying employees for whom Contributions were then due.

13. Beginning in December 2015, Bayway ceased paying Contributions and providing Reports to the Funds despite its obligation to do so.

14. By letter dated July 27, 2016, Funds counsel demanded that Bayway pay the Funds Contributions owed for the months of December 2015 through June 2016.

15. Counsel's letter also demanded that Bayway provide Reports for these Contributions.

16. Bayway did not remit any of the Contributions owed or provide any Reports to the Funds office.

17. As of this date, Bayway owes the Pension Fund an estimated \$22,500 in Contributions for the months of December 2015 through June 2016.

18. As of this date, Bayway owes the Welfare Fund an estimated \$44,901.08 in Contributions for health and severance benefits for the months of December 2015 through June 2016.

19. Article VI, Paragraph 5 of the Trust Agreements, under which the Funds are maintained, authorize each Fund's Trustees to institute legal action on behalf of that Fund to recover unpaid Contributions. The Trust Agreements further provide that any such action shall

seek damages that include the unpaid Contributions, interest, liquidated damages equal to the greater of 20% of the unpaid Contributions or the interest due, attorneys' fees and costs.

AS AND FOR A CAUSE OF ACTION

20. Plaintiffs reassert and re-allege paragraphs "1" through "19" and incorporate them herein.

21. Despite its obligations under the CBA and due demand made by the Funds, Bayway has refused to remit Contributions and Reports owed to the Funds.

22. In accordance with the terms of the Trust Agreements, and pursuant to Section 502(g)(2) of ERISA, Bayway is liable to the Funds for the unpaid Contributions, interest, liquidated damages equal to the greater of the total amount of interest due or 20% of the Contributions due and the legal fees and costs incurred in this action.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Bayway and that this Court order the following relief, as required by ERISA Section 502(g)(2), 29 U.S.C. § 1132(g)(2), the CBAs and the Trust Agreements:

- (a) That Bayway pay all Contributions owed the Funds for the months of December 2015 through June 2016;
- (b) That Bayway provide accurate Reports to the Funds office for each month for which it remits Contributions;
- (c) That Bayway pay to the Funds interest on all delinquent Contributions from the dates on which the Contributions were due through the date(s) of payment;
- (d) That Bayway pay to the Funds liquidated damages equal to the greater of the amount of interest on the Contributions due or twenty percent (20%) of the total amount of Contributions due;

- (e) That Bayway pay the legal costs and attorneys' fees incurred by Plaintiffs in this action; and
- (f) For such other and further relief as the Court may deem just and proper.

DATED: September 22, 2016
New York, New York

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